

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr. Appeal No.130 Of 2000.
Judgment reserved on 20th June, 2007.
Date of decision: June 25th, 2007.

State of Himachal Pradesh.	Vs.	 Appellant.
Saurabh alias Minu.		 Respondent.

Coram

The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting? No.

For the Appellant: Mr.V.K.Verma, Addl.Advocate General.

For the respondent: Mr.Shrawan Dogra Advocat with
Mr. Vikram Thakur, Advocate.

Surinder Singh, J:

The State appellant is feeling aggrieved and dissatisfied by the judgment of acquittal passed by the learned Sessions Judge, Mandi, in Criminal Appeal No.20/1998, decided on 22.9.1999, whereby the conviction and sentence passed by the learned trial Court under Sections 451, 323 and 324 of the Indian Penal Code was set-aside. The leave to appeal was granted on 6.4.2000 by this court and now the matter has been finally heard.

Shri V.K. Verma, learned Additional Advocate General for the State has vehemently argued that the impugned judgment of acquittal passed by the first appellate Court is

Whether reporters of local Papers may be allowed to see the judgment? Yes .

unsustainable, because the learned court below has given its findings on conjectures and surmises thus arrived at a wrong conclusion without appreciating the evidence on record in the right perspective. On the other hand, Shri Shrawan Dogra, learned counsel assisted by Mr. Vikram Thakur, learned counsel for the respondent, has supported the impugned judgment as legally and factually sustainable.

I have given my best consideration to the rival contentions and have examined the evidence on record.

According to the case of the prosecution, on 31st December, 1994 Shesh Ram (PW2) was at his home. At about 1.00 p.m., the respondent-son of the landlord asked Shesh Ram to vacate the premises, to which, he (Shesh Ram) replied that he would vacate the tenanted premises on getting the alternate accommodation. On hearing this, the respondent is alleged to have got excited and entered the room of the complainant, gave him 5/6 blows with a knife on his left hand. Complainant Shesh Ram raised alarm, by which a lady got attracted and on seeing her, the respondent fled away from the spot. Thereafter Shesh Ram was taken to the hospital and a statement Ext.PW2/A was recorded under Section 154 of the Code of Criminal Procedure, on the basis of which formal FIR Ext.PW5/A was lodged. Police visited the spot, prepared site plan Ext.PW7/A, took into possession blood stained clothes of the complainant Shesh Ram, vide memo Ext.PW2/B and Choori (knife) vide memo Ext.PW7/B. Medico Legal Certificate of complainant is Ext.PW8/A. It shows about three injuries in the frontal, parietal and occipital area of the head, one incised

wound on the left palm, opined to have been caused with a sharp-edged object, within 12 hours, however, all the injuries were simple in nature. After completing the investigation of this case, challan was put in the court under the aforesaid Sections. Finding a prima-facie case against the respondent, he was charge-sheeted. The respondent denied the charges and claimed trial.

To prove its case, prosecution examined Deep Ram (PW1), complainant Shesh Ram (PW2), Kapur Chand, Lineman (PW3), Bhavneshwar Lal (PW4), HC Amar Singh (PW5), Ramesh Chand (PW6), ASI Mast Ram (PW7) and Dr. A.K. Mishra (PW8). The respondent denied all the circumstances put to him in his statement under Section 313 of the Code of Criminal Procedure. He did not lead any evidence in defence.

After completion of trial and on appreciating the evidence of the prosecution, the Additional Chief Judicial Magistrate, convicted the respondent under Section 451 and 324 of the Indian Penal Code, but instead of passing a sentence, he was given the benefit of Section 4 of Probation of Offenders Act. The respondent filed an appeal before the learned Sessions Judge, Mandi, who on re-appreciating the evidence on record found that the judgment of conviction was unsustainable, accordingly reversed the findings, accepted the appeal and acquitted the respondent.

I have gone through both the above judgments. The very fact of causing injuries by the knife produced and identified in the court was not possible as stated by Dr. A.K. Mishra (PW8), who had an opportunity examine the complaint

Shesh Ram (PW2). The injured Shesh Ram aforesaid has deposed in the trial court that when he was cooking the food, sister of the respondent was playing with the window. He asked her not to do so. She complained to the respondent and on this the respondent entered the room and imputed the allegation of teasing his sister and hurled abuses and then hit him with the knife. When he cried, a Photographer and a Dentist came there. He was taken to the office, from where, he was removed to the hospital by Kapur Chand and Ramesh Chand and thereafter report was lodged, as aforesaid. In the cross-examination, he has given somewhat another version that there were two girls in the adjacent room. One was the sister of the respondent and he did not know the another girl. Both of them were doing Bhajans and again tried to improve himself and stated that both of them were singing songs, but he did not say that the respondent had asked to vacate the premises, as initially alleged in his complaint. He had deviated from his earlier version on which the police was set in motion. Deep Ram was not an eye witness though noticed injuries on his person. Kapur Chand (PW3) who is alleged to have taken the complainant to the hospital did not know what was the bone of contention. PW4 Bhavneshwar Lal did not support the case of the prosecution. Further the Dr. A.K.Mishra (PW8) has deposed that the injury No.4 can be caused by fall on sharp edged surface.

In view of the above standard of evidence, the view taken by the learned Sessions Judge, for the acquittal of the respondent is reasonable and plausible from the evidence on

record. The findings cannot be reversed on the ground that another view is also possible. It is settled a principle of law that where two views are deducible, the view which is favourable to the accused has to be taken into consideration, which does not get diluted by filing an appeal against the acquittal. Thus, in my considered opinion, the impugned judgment is legally and factually sustainable. Accordingly, the appeal is dismissed. The bail bonds of the respondents, entered upon at any stage during the proceedings of this case stand discharged.

June 25th, 2007.
(PDS)

(Surinder Singh)
Judge.